based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This rule removes restrictions on the interstate movement of regulated articles from eight counts in Texas. Within the previously regulated areas there are approximately 59 entities that will be affected, including 23 fruit/produce markets, 16 nurseries, 7 flea markets, 8 packing sheds, and 5 commercial growers of peaches and apples. These entities comprise less than one percent of the total number of similar enterprises operating in the State of Texas.

Most of these entities handle regulated articles primarily for local movement, so their distribution of those articles was not affected by the regulatory provisions we are removing. Entities that do handle regulated articles for interstate movement could move most articles without significant added costs under specific conditions set forth in the regulations. Additionally, many of these entities also handle items other than the previously regulated articles. For these reasons we expect that any effect that this rule might have on these entities is minimal.

Under these circumstances, the
Administrator of the animal and Plant
Health Inspection Service has
determined that this action will not have
a significant economic impact on a
substantial number of small entities.

# **Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

# **Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### **Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

# List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mexican fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

# PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.64–3 that was published at 56 FR 46107–46108 on September 10, 1991.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 15th day of July 1992.

#### Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17022 Filed 7-17-92; 8:45 am]

# **Agricultural Marketing Service**

# 7 CFR Part 1209

[FV-91-404]

RIN 0581-AA49

Procedures for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order and Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Such Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Mushroom Promotion, Research, and Consumer Information Act of 1990 authorizes a program of promotion, research, and consumer information to be developed through the promulgation of an order. The U.S. Department of Agriculture recently issued a proposed order and announced a producer and importer referendum. To become effective the proposed order must be approved by mushroom producers and importers in a referendum. This rule establishes procedures for the conduct of the initial referendum to determine if producers and importers favor implementation of the proposed order. These procedures will also apply to any subsequent referenda to amend, continue, or terminate the order should it be implemented. In addition to referenda procedures, this rule contains rules of practice governing proceedings on

petitions to modify or to be exempted from the order.

EFFECTIVE DATE: July 20, 1992.

ADDRESSES: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533—S, Washington, DC 20090—6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address or telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: This final rule, authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), hereinafter referred to as the Act, establishes the procedures for the conduct of the initial referendum and any subsequent referenda applicable to the Mushroom Promotion, Research and Consumer Information Order (order). In addition, this action also establishes the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Such Order.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State.

The Act further provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1927 of the Act, a person subject to the order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition, which will be final if in accordance with the law. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the ruling on such person's petition, if a complaint for that

purpose is filed within 20 days after the date of the entry of such ruling of the Secretary.

## Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The most recent Department estimate of mushroom growers in the United States indicates that there are 460 domestic growers. Between 100 and 150 of these growers would fall under the definition of "producer" as defined in the Act and be subject to the provisions of the order. A minority of these producers would be classified as small entities. Small agricultural producers have been defined by the Small **Business Administration (13 CFR** 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than \$3,500,000. There are approximately 100 handlers, including producers who are also handlers, who would be subject to the provisions of the order. A majority of these handlers would be classified as small entities. There are no more than 3 importers, out of approximately 30 importers, who would be subject to the provisions of the order. A majority of these importers would be classified as small entities.

During the period from July 1, 1990, through June 30, 1991, Department statistics indicate that 756 million pounds of mushrooms were produced in the United States. Of this total production, 518 million pounds were for fresh market. During this same period, Department statistics indicate that 3.5 million pounds of fresh mushrooms were imported into the United States. Major exporting countries, as a percentage of total fresh mushroom imports, were Canada (93.9%), Thailand (2.0%), Japan (1.9%), and Taiwan (1.0%).

The order would require each mushroom producer and importer who produces or imports, on average, more than 500,000 pounds of fresh mushrooms annually to pay an assessment which could be incrementally increased to a maximum rate of one cent per pound. Such a maximum assessment rate could not be realized until the fourth year of the order. In addition, the order would

require an estimated 100 first handlers of fresh mushrooms, a majority of whom would be classified as small entities, to collect and remit such assessments.

This rule establishes procedures for the initial referendum to determine whether the order will go into effect. Such a referendum is required by the Act. These procedures also apply to any subsequent referenda to amend, continue, or terminate the order should it be implemented. In addition to referenda procedures, this rule contains rules of practice governing proceedings on petitions to modify or to be exempted from the order. The Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

# **Paperwork Reduction**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581-0093, except for the Council nominee background statement form which is assigned OMB control number 0505-0001. It is estimated that up to 153 mushroom producers and importers will be eligible to vote in the initial referendum and that it will take an average of 6 minutes for each producer and importer to complete the referendum ballot.

# Background

The Act authorizes the development of a nationally coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace; maintain and expand existing markets and uses for mushrooms; and develop new markets and uses for mushrooms. An order implementing the program must first be approved by producers and importers voting in a referendum.

Persons voting in the initial referendum and subsequent referenda will certify their eligibility to vote and will designate their status as either a mushroom producer or importer. Only current producers or importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in such referenda. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period. These figures will be used to determine the results of the voting based

on the volume of mushrooms produced and imported by those eligible and voting.

In addition to referenda procedures, this rule contains rules of practice for proceedings on petitions to modify or be exempted from an order. Section 1927 of the Act provides that any person subject to an order may file a written petition with the Secretary stating that such order or any provision of such order is not in accordance with law. The person may request a modification of such order or an exemption from certain provisions or obligations of such order. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary

A proposed rule on the referenda and petition filing procedures was published in the January 29, 1992, issue of the Federal Register (57 FR 3360). Interested persons were invited to submit comments on the proposal until February 29, 1992. Two comments were received in response to the proposed rule. One comment was received jointly from the American Mushroom Institute and the Mushroom Council (AMI) and another from the Pictsweet Mushroom Farms Division of United Foods, Inc. (United).

Comments from the AMI suggested certain changes to § 1209.303 of the proposed rule which would specifically grant the right to cast ballots by mail. Proposed § 1209.303(b) provides that the referendum agent shall determine the voting method. The provision gives the referendum agent the latitude to determine whether ballots may be cast by mail, at polling places, or by a combination of the two. In addition, the Administrator of the AMS is authorized to prescribe additional instructions concerning how a referendum is to be conducted. This latitude is needed in order to effectively conduct impartial referenda. Therefore, the comment is denied.

The AMI requested that a procedure be added to the referendum rules to permit public challenges to the qualifications of those casting votes. To this end, the AMI specifically requested that the referendum agent make available for public inspection, for 10 days following the voting period, a list of each person casting a vote in the referendum. The change requested by the AMI would be inconsistent with the confidentiality provisions of the proposed order and regulations. The AMS and the referendum agent will take the appropriate steps necessary to ascertain the validity of the ballots which are cast in the referendum.

Anyone has a right to challenge the validity of any ballot. If a challenge is brought to the attention of the referendum agent, such investigation as is necessary will be made to determine

the validity of the ballot.

The AMI commented that the term "trusts" should be added to proposed \$ 1209.302(b) since the administrators, executors, or trustees of eligible producing or importing estates would be eligible to cast ballots on behalf of such estates. The term "trusts" is not mentioned in this section. In response to the comment, the Department has decided to clarify the language in \$ 1209.302(b) of this rule by changing the

term "estate" to "entity."

The AMI also commented that the definition of "representative period" in proposed § 1209.301(d) should be revised to reflect the fact that such period would allow for averaging production, such as a rolling two-year period. The definition of "representative period" is consistent with other such definitions in research and promotion orders administered by the Department. In selecting the period for the purposes of the initial referendum, the Secretary will take into account the provisions and requirements of the Act, including the provision that production and importation be determined on an average annual basis.

The AMI addressed the issue of a definition for "fresh market" which is similar to its comment on the proposed order. This comment has already been considered in the analysis of comments on the proposed order and will not be addressed in this rulemaking procedure.

Finally, the AMI provided supplemental comments on the comments submitted with regard to the proposed order rulemaking by the Office of Advocacy, which is part of the Small Business Administration. These supplemental comments will be considered part of the rulemaking record but will not be addressed in this rulemaking procedure.

Several comments from United indicate that United may have misinterpreted certain provisions of the

proposed rule.

United expressed concern that private parties could be allowed to act as referendum agents in the conduct of referenda. The Department does not intend that private parties should act as referendum agents in the conduct of referenda. Referendum agents will be Department employees not private parties. Such agents will conduct referenda in accordance with the procedures contained in this rule and pursuant to Department policy and practice.

United also expressed concern that the proposed rule did not set out any meaningful requirements for publicizing referenda. The Department does not agree with this comment. Proposed § 1209.303(d) states that the referendum agent will give reasonable advance public notice of the referendum "by utilizing available media or public information sources \* \* \* Such sources of publicity may include, but are not limited to, print and radio; and by such other means as the agent may deem advisable."

United commented on the Department's ability to notify mushroom growers and importers of the initial referendum. The Department has developed an extensive voter list containing the names of known mushroom growers and importers. Due to the eligibility requirements specified in the Act and proposed order, a majority of the persons on this list will not be eligible to vote in the referendum. On January 23, 1992, the Department mailed out information to all persons on this list regarding the issuance and content of a proposed order and notice of a public meeting to discuss such order. Such mailings amply demonstrate the Department's ability to effectively and fairly notify affected and interested

United further commented that if the Department has developed any type of voter list, then the Department should make such a list publicly available at least 90 days before a referendum in order to ensure informed producer and importer participation. The Department does not agree with this comment. The release of such a list involves the issue of an individual's right to privacy. Furthermore, the Department has demonstrated its capability to effectively and fairly inform voters on the proposed order. The public availability of such a list prior to a referendum would duplicate the Department's efforts and is not expected to significantly increase voter

participation in a referendum.

United also commented that the proposed rule did not provide specific information regarding the voter package to be used in the initial referendum. The AMS has developed a uniform voter package to be used in the conduct of referenda relating to research and promotion programs. This package can be readily altered to accommodate the particulars of individual programs. It was not the intent of the Department to include the details of such a package as a part of the proposed rule.

United suggested that voters be given three options when voting in any referendum. It was recommended that the ballot allow voters a vote of: "yes," "no," or "no preference." The Department does not agree with the inclusion of the language "no preference" on the ballot. The purposes for holding a referendum are to determine whether an order will be implemented, continued, amended, or terminated by those voting in the referendum. Consequently, such a determination can be fairly concluded by a "yes" or "no" vote. Therefore, the comment is denied.

United also suggested that in order to ensure maximum participation among eligible voters in a referendum, voting should be done through the mail and by secret ballot. The Department agrees with this comment in regard to the initial referendum. However, voting in subsequent referenda, as provided in final § 1209.303(b), may be undertaken by mail, at polling places, or any combination of the two.

United expressed concern that the proposed rule did not set out criteria to verify the eligibility of persons voting in referenda. The Department has developed appropriate safeguards to verify voter eligibility in the initial referendum and subsequent referenda. It was not the intent of the Department to include the specifics of such safeguards as part of the rule.

United further commented that the proposed rule did not provide any procedures to challenge ballots or to appeal decisions to strike ballots. The issue on public challenges to ballots is addressed in the Department's response to the AMI's comment on this subject.

In regard to United's comment concerning appealing the Department's invalidation of an individual's ballot, any individual voter may request to see how their own ballot was handled by the referendum agent. Further, by the time ballots for the referendum are mailed, detailed referendum procedures for handling and tabulating ballots will be available to the public on request. It should be noted that all ballots are kept in a locked box until the voting period is over. At that time an auditor from the Office of Audit, which is part of the Office of the Inspector General, will observe the opening of all ballots and the subsequent validation and tabulation of the votes. This is standard practice for referenda conducted by the Fruit and Vegetable Division. Therefore, the comment to include these additional safeguards, including United's suggestion of using an independent auditor to monitor voting and assess results, is denied.

United further stated that since the order is not yet effective, the definitions

of key terms, such as "producer," "importer," or "mushrooms," are still subject to change. This final rule will be issued after the issuance of a proposed order which is subject to approval by producers and importers in the initial referendum. Only after it is approved can the order become effective. However, it will be final insofar as its terms and definitions are concerned prior to the referendum conducted in accordance with these rules. Further, the phrase "on average" has been added for clarity to the definitions of "eligible producer" and "eligible importer" in this rule and for the same reason in the definition of "eligible producer" the term "lessor-lessee" has been changed to "landlord-tenant."

United commented that the proposed rule did not provide for the establishment of a representative period. United further commented that it was unclear who may vote in the initial referendum. It was not the Department's intent to establish a representative period in the proposed rule. Such a period is specified in a proposed rule and referendum order to establish a Mushroom Promotion, Research, and Consumer Information Order. A proposed rule containing a proposed order and referendum order was published in the June 10, 1992, issue of the Federal Register (57 FR 24720).

In the aforementioned proposed rule, the representative period will be a specified two-year period. The Department will determine a person's eligibility to vote in the initial referendum and any subsequent referenda by averaging such person's total fresh market production or importation over the specified period. In addition, any person voting in the initial referendum must satisfy the proposed order's definition of "producer" or "importer" on the actual date that their ballot is completed. Such persons must certify their volume of production or importation on the ballot which is subject to verification.

United also commented that the definition of "eligible importer" provides no justification to allow persons, such as agents and brokers, to vote on behalf of actual importers. The Department does not agree with this comment. The definition of "importer" in the Act and in the proposed order is used in general terms to mean any person who imports. It is intended that this term should include any person who imports, as a principle or as an agent, broker, or consignee, mushrooms from outside of the United States for marketing in the United States. Due to the modest quantity of imported fresh market

mushrooms, the estimated number of eligible importers voting in the initial referendum will not exceed 3 percent of the estimated number of eligible producers voting in the referendum. Such a percentage is not expected to skew the vote nor result in mushrooms being double-counted, as United contends.

Other comments submitted by United were related to the order and will be addressed in the final decision on a proposed order. Thus, these comments will not be discussed in connection with this rulemaking action.

After considerations of all relevant material presented, including the comments received and other available information, it is found that this action, and all of terms and conditions thereof, tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. A proposed rule containing a proposed order and referendum order was published in the June 10, 1992, issue of the Federal Register (57 FR 24720). To become effective, the proposed order must be approved by mushroom producers and importers in referendum. In order to conduct a referendum in a timely manner, this rule should be made effective as soon as possible. Further, interested persons were afforded a 30day comment period, and no useful purpose would be served in delaying the effective date. Therefore, this final rule is effective on the date of publication in the Federal Register.

# List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter XI of title 7, is amended by adding part 1209 to read as follows:

# PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

#### Subparts A-B-[Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

Sec.
1209.300 General.
1209.301 Definitions.
1209.302 Voting.
1209.303 Instructions.

Sec.

1209.304 Subagents.

1209.305 Ballots.

1209.306 Referendum report. 1209.307 Confidential information.

Subpart D—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order

1209.400 Words in the singular form.

1209.401 Definitions.

1209.402 Institution of proceeding.

Authority: 7 U.S.C. 6101 et seq.

#### Subparts A-B-[Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

#### § 1209.300 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination, or suspension of a Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with this subpart.

#### § 1209.301 Definitions.

- (a) Administrator means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.
- (b) Order means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order, with respect to which the Secretary has directed that a referendum be conducted.
- (c) Referendum agent or agent means the individual or individuals designated by the Secretary to conduct the referendum.
- (d) Representative period means the period designated by the Secretary.
- (e) Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:
- (1) A husband and wife who has title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) Eligible producer means any person defined as a producer who produces, on average, over 500,000 pounds of mushrooms annually during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the

mushrooms produced;
(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the

mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) Eligible importer means any person defined as an importer in the Order who imports, on average, over 500,000 pounds annually during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

(h) Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, Subtitle B of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6101–6112, and any amendments thereto.

(i) Commerce means interstate,

foreign, and intrastate commerce.

(j) Council means the administrative body referred to as the Mushroom Council established under § 1925(b) of the Act.

(k) Department means the United States Department of Agriculture.

(1) Fiscal Year means the 12-month period from January 1 through December 31 each year, or such period as recommended by the Council and approved by the Secretary.

(m) Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from

outside the United States.

(n) Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

(o) On average means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the

Secretary.

(p) Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

(q) Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(r) State means any of the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

(s) To market means to sell or otherwise dispose of mushrooms in any channel of commerce.

(t) United States means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

#### § 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the

referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer, importer, or entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity. and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

#### § 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an

eligible voter.

(2) The total volume of mushrooms produced by the voting producer during the representative period.

(3) The total volume of mushrooms imported by the voting importer during the representative period, and

(4) In a joint venture, names of the parties and each party's share of ownership.

(d) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, methods of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of the Order, the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places, determine the necessary number of polling places, designate them, announce the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointed subagents, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such agent or subagents during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

#### § 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform, in accordance with the requirements herein set forth, any or all of the following functions which, in the absence of such appointment, shall be performed by the agent:

(a) Give public notice of the referendum in the manner specified herein;

(b) Serve as poll officer at a polling place;

(c) Distribute ballots and provide the material specified in § 1209.303(e) to producers and importers and receive any ballots which are cast; and (d) Record the name and address of each person receiving a ballot from, or casting a ballot with, the subagent and inquire into the eligibility of such person to vote in the referendum, indicating all challenged ballots deemed to be invalid.

#### § 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

#### § 1209.306 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

#### § 1209.307 Confidential Information.

All ballots cast and the contents thereof, whether or not relating to the identity of any person who voted or the manner in which any person voted, and all information furnished to, compiled by, or in possession of the referendum agent or subagents shall be treated as confidential.

Subpart—D Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order

#### § 1209.400 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

## § 1209.401 Definitions.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart C—Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order.

(a) Administrative law judge or judge means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) Person means any individual, group of individuals, partnership, corporation, association, cooperative, or

any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(c) Proceeding means a proceeding before the Secretary arising under section 1927 of the Act;

(d) Hearing means that part of the proceedings which involves the submission of evidence;

(e) Party includes the Department of Agriculture;

(f) Hearing clerk means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC;

(g) Decision means the judge's report to the Secretary and includes the judge's proposed:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof,

(2) Order, and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(h) Petition includes an amended petition.

# § 1209.402 Institution of proceeding.

- (a) Filing and service of petitions. Any person subject to the Order desiring to complain that such Order or any provision of such Order or any obligation imposed in connection with the Order is not in accordance with law shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.
- (b) Contents of petitions. A petition shall contain:
- (1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the Order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the tacts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly

and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the Order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the Order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the

Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and

not for purposes of delay. (c) A motion to dismiss a petition: filing, contents, and responses to a petition. If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon

consideration.

(d) Further proceedings. Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders and as may hereafter be amended, and the same are incorporated herein and

the expiration of the time specified in

papers from the petitioner, the hearing

have been filed in connection with the

clerk shall transmit all papers which

motion to the judge for the judge's

such notice, or upon receipt of such

made a part hereof by reference. However, each reference to marketing order in the title shall mean Order.

Dated: July 15, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92–17000 Filed 7–15–92; 11:01 am]

BILLING CODE 3410-02-M

# DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 274a

[INS No. 1458-92]

RIN 1115-AD16

Pre-Completion Interval Training; F-1 Student Work Authorization

AGENCY: Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

SUMMARY: This rulemaking will restore the ability of foreign students to engage in practical training prior to completion of their course of study and will also provide employment authorization for F-1 students based upon severe economic hardship. Pre-completion training is necessary to permit students to accept short-term employment that furthers their academic studies before the students have graduated. It will provide a student with practical training as a part of the student's educational experience within the United States. Providing work authorization based on severe economic hardship is necessary to permit students who suffer unforeseen financial difficulties to remain in status and to continue their education at the school in which they are enrolled.

DATES: This interim rule is effective July 20, 1992. Written comments must be submitted on or before September 18, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference INS number 1458–92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: William R. Tollifson, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (Service) published a final rule in the Federal Register concerning F-1 student work authorization on October 29, 1991, at 56 FR 55608-55617. The final rule attempted to streamline the procedures for employment authorization. While the regulation implemented the Pilot Off-Campus Employment Program and both simplified the paperwork involved in and expanded the definition of oncampus employment, it eliminated the separate pre-completion training and economic necessity work authorization provisions.

The Service is restoring precompletion practical training within the ambit of the standard practical training regulations. Permitting practical training prior to course completion will provide foreign students with more flexibility to engage in employment directly related to their studies. Such practical training will be deducted from the 12 months of practical training generally available.

Authorization for pre-completion practical training will be expedited by the Service for the 1992 summer vacation period. The Service will issue an Employment Authorization Document (EAD) to an eligible walk-in applicant at the Service office having jurisdiction over the applicant's place of residence. Alternatively, if an eligible student elects to mail the Form I-765, Application for Employment Authorization, to the designated Service office, the Service will make every attempt to schedule an appointment to issue the EAD within 7 days of receipt. With respect to periods after the summer of 1992, the integrity considerations pertaining to the issuance of an EAD to an eligible F-1 student are undergoing further policy review. This issue will be addressed at the time of publication of the final rule.

The Service is also providing for work authorization based upon severe economic hardship. This will enable students who have suffered unexpected financial difficulties, and for whom the Pilot Off-Campus Employment Program is unavailable or insufficient, to continue their education without interruption. It should be noted that work authorization based upon severe economic hardship will differ from the former economic hardship program.

First, the Designated School Official (DSO) will no longer endorse the Form I-20 Student ID. As is the case with other categories of work authorization for nonimmigrants, F-1 students will

have to apply for an EAD on Form I-765 at the district offices having jurisdiction over their place of residence. Form I-538, the DSO certification, should accompany the Form I-765 application. This new rule also mandates that a student must make a good faith effort to pursue employment authorization oncampus and under the Pilot Off-Campus Employment Program. The DSO must certify on Form I-538 that neither the existing Pilot program nor on-campus employment is available or sufficient to meet the student's severe economic hardship. If a student were able to find adequate employment on-campus or under the Pilot program, the student would not be able to make a showing of need for work authorization based upon severe economic hardship.

It is the view of the Service that requiring the student to make a good faith effort to find employment through other programs will not impose an onerous burden on the students, the DSOs, or the employers. The Service has provided a suggested approach to complying with this requirement. The student should consult his or her DSO to determine whether there are any employment opportunities under the Pilot program available in the area. If such opportunities exist, the student should pursue those available opportunities. If employment under the Pilot program is insufficient, the DSO's certification to that effect on Form I-538 will satisfy the requirements of this section. On the other hand, if the DSO knows that no Pilot program employment exists and on-campus employment is unavailable or insufficient, the DSO's certification to that effect on Form I-538 will also satisfy the requirements of this section.

Finally, the Service is revising 8 CFR 274a to require that students who seek employment for purposes of optional practical training or who seek employment because of severe economic hardship apply for work authorization.

The Service's implementation of this rule as an interim rule, with a provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). This rulemaking falls under the good cause exception because a notice and comment period would be impracticable and contrary to the public interest. This rulemaking confers a benefit upon eligible students, and does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are eligible to apply for work authorization based upon severe

economic hardship or for pre-completion practical training may apply for either benefit accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5 Display of Control Numbers.

# List of Subjects

### 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment.

## 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

# PART 214-NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a; 8

2. Section 214.2 is amended by revising paragraph (f)(9)(ii) to read as follows:

#### § 214.2 Special requirements for admission, extension, and maintenance of status.

(f) · · ·

(9) \* \* \*

(ii) Off-campus work authorization-(A) General. An F-1 student may be authorized to work off-campus on a part-time basis in accordance with paragraph (f)(9)(ii) (B) or (C) of this section after having been in F-1 status for one full academic year provided that the student is in good academic standing as determined by the DSO. Part-time offcampus employment authorized under this section is limited to no more than twenty hours a week when school is in session. A student who is granted offcampus employment authorization may work full-time during holidays or school vacation. The employment authorization is automatically terminated whenever the student fails to maintain status.

(B) Wage-and-labor attestation requirement. Except as provided under paragraphs (f)(9)(ii)(C) and (f)(9)(iii) of this section, a student may be authorized to accept off-campus employment only if the prospective employer has filed a labor-and-wage attestation pursuant to 20 CFR part 655, subparts I and K (requiring the employer to attest to the fact that it has actively recruited domestic labor for at least 60 days for the position and will accord the student worker the same wages and working conditions as domestic workers similarly employed.)

(C) Severe economic hardship. If other employment opportunities are not available or are otherwise insufficient. an eligible F-1 student may request offcampus employment work authorization based upon severe economic hardship caused by unforeseen circumstances beyond the student's control. These circumstances may include loss of financial aid or on-campus employment without fault on the part of the student, substantial fluctuations in the value of currency or exchange rate, inordinate increases in tuition and/or living costs, unexpected changes in the financial condition of the student's source of support, medical bills, or other

substantial and unexpected expenses. (D) Procedure for off-campus employment authorization. The student must submit the application to the DSO on Form I-538, Certification by Designated School Official. The DSO may recommend the student work offcampus for one year intervals by certifying on the Form I-538 that:

(1) The student has been in F-1 status for one full academic year:

(2) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(3) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(4) Either: (1) The prospective employer has submitted a labor-andwage attestation pursuant to paragraph (f)(9)(ii)(B) of this section, or

(ii) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section, and has demonstrated that employment under paragraph (f)(9)(i) and (f)(9)(ii)(B) of this

section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

- (E) Wage-and-Labor attestation application to the DSO. An eligible F-1 student may make a request for offcampus employment authorization to the DSO on Form I-538 after the employer has filed the labor-and-wage attestation. By certifying on Form I-538 that the student is eligible for off-campus employment, and endorsing the student's I-20 ID, the DSO may authorize off-campus employment in one year intervals for the duration of a valid attestation as determined by the Secretary of Labor. The endorsement on the student's I-20 ID should read "parttime employment with (name of employer) at (location) authorized from (date) to (date)." Off-campus employment authorized by the DSO under this provision is incident to the student's status pursuant to 8 CFR 274a.12(b)(6)(ii) and employer-specific and, therefore, exempt from the EAD requirement. The DSO must notify the Service of each off-campus employment authorization by forwarding to the Service data processing center the completed Form I-538. The DSO shall return to the student the endorsed I-20
- (F) Severe economic hardship application-(1) The applicant should submit to the Service Form I-20 ID, Form I-538, and Form I-765 along with the fee required by 8 CFR 103.7(b)(1), and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraphs (f)(9)(i) and (f)(9)(ii)(B) of this section. The requirement with respect to paragraph (f)(9)(ii)(B) of this section is satisfied if the DSO certifies on Form I-538 that the student and the DSO are not aware of available employment in the area through the Pilot Off-Campus Employment Program. In areas where there are such Pilot program opportunities, this requirement is satisfied if the DSO certifies on Form I-538 that employment under the Pilot program is insufficient to meet the student's needs. The student must apply for the employment authorization on Form I-765 with the Service office having jurisdiction over his or her place of residence.
- (2) The Service shall adjudicate the application for work authorization based upon severe economic hardship on the basis of Form I-20 ID, Form I-538, and Form I-765, and any additional

supporting materials. If employment is authorized, the adjudicating officer shall issue an EAD. The Service director shall notify the student of the decision, and, if the application is denied, of the reason or reasons for the denial. No appeal shall lie from a decision to deny a request for employment authorization under this section. The employment authorization may be granted in one year intervals up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives the EAD endorsed to that effect. Offcampus employment authorization may be renewed by the Service only if the student is maintaining status and good academic standing. The employment authorization is automatically terminated whenever the student fails to maintain status. \* \*

3. In § 214.2, paragraph (f)(10)(ii) is revired to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

(f) \* \* \* \* (10) \* \* \* \*

(ii) Optional practical training—(A) General. An F-1 student may apply to the Service for authorization for temporary employment for practical training directly related to the student's major area of study. Temporary employment for practical training may be authorized:

(1) During the student's annual vacation and at other times when school is not in session if the student is currently enrolled and eligible, and intends, to register for the next term or session:

(2) While school is in session, provided that practical training does not exceed twenty hours a week while school is in session;

(3) After completion of all course requirements for the degree (excluding thesis or equivalent), if the student is in a bachelor's master's, or doctoral degree program; or

(4) After completion of the course of study. A student must complete all practical training within a 14 month period following the completion of study.

(B) Termination of practical training.
Authorization to engage in practical training employment is automatically terminated when the student transfers to another school.

(C) Request for authorization for practical training. A request for authorization to accept practical training

must be made to the designated school official (DSO) of the school the student is authorized to attend on Form I-538, accompanied by his or her current Form I-20 ID.

(D) Action of the DSO. In making a recommendation for practical training, a designated school official must:

(1) Certify on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level;

(2) Endorse and date the student's Form I-20 ID to show that practical training in the student's major field of study is recommended "full-time (or part-time) from (date) to (date)"; and

(3) Return to the student the Form I-20 ID and send to the Service data processing center the school certification on Form I-538.

4. In § 214.2, paragraph (f)(11) introductory text is amended by adding two sentences at the beginning of the paragraph to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

(f) \* \* \*

(11) Employment authorization. The total periods of authorization for optional practical training under paragraph (f)(10) of this section shall not exceed a maximum of twelve months. Part-time practical training, 20 hours per week or less, shall be deducted from the available practical training at one-half the full-time rate.\* \* \*

# PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

6. In § 274a.12, paragraph (c)(3) is revised to read as follows:

# § 274a.12 Classes of aliens authorized to accept employment.

(c) \* \* \*

(3) A nonimmigrant (F-1) student who:

(i) Is seeking employment for purposes of optional practical training pursuant to 8 CFR 214.2(f), provided the alien will be employed only in an occupation which is directly related to his or her area of studies and that he or she presents an I-20 ID endorsed by the designated school official;

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship. The F-1 student must also present an I-20 II) endorsed by the DSO in the last 30 days; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I-20, Form I-538 and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization and evidence the fact that the student has attempted to find employment under 8 CFR 214.2(f)(9)(ii)(B);

Dated: July 14, 1992. Gene McNary.

BILLING CODE 4410-10-M

Commissioner, Immigration and Naturalization Service. [FR Doc. 92–16966 Filed 7–17–92; 8:45 am]

# DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 108CE, Special Condition 23-ACE-72]

Special Conditions; Beech Model C90 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

SUMMARY: These special conditions are being issued to Air BP Atlanta for a Supplemental Type Certification (STC) on the Beech Model C90 Series airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of lightning and high intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level

of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is August 19, 1992. Comments must be received on or before August 19, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 108CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 108CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 428-5688.

#### SUPPLEMENTARY INFORMATION

#### **Comments Invited**

The FAA has determined that good cause exists for making these special conditions effective 30 days after issuance; however, interested persons are invited to submit such written data. views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 108CE." The postcard will be date stamped and returned to the commenter.

# Background

On May 13, 1992, Air BP Atlanta, Dekalb Peachtree Airport—One Corsair Drive, Atlanta, Georgia 30341, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model C90 airplane. The proposed modification incorporates a novel or unusual design feature such as digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to HIRF external to the airplane.

# **Type Certification Basis**

The type certification basis for the Beech Model C90 Series airplane is as follows: Part 3 of the Civil Air Regulations (CAR), effective May 15, 1956, through amendment 3-2, effective August 12, 1957; amendment 3-6. effective September 13, 1961; amendment 3-7, § 3.705, effective May 3, 1962; amendment 3-8, effective December 18, 1961; part 23 of the Federal Aviation Regulations (FAR). amendment 23-7, §§ 23.959, 23.1111 and 23.1583(a), effective September 14, 1969; amendment 23-23, §§ 23.1385(c), 23.1387(a) and 23.1545, effective December 1, 1978; special conditions outlined in FAA letters to Beech dated January 21, February 15, and February 27, 1963, and May 5, 1965; part 36 of the FAR, effective December 1, 1969, through amendment 36-10; SFAR 27, effective February 1, 1974, through amendment 27-4; amendment 23-41, §§ 23.1309 and 23.1311, effective November 8, 1990; exemptions, if any: and the special conditions adopted herein.

#### Discussion

Air BP Atlanta plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of lightning and HIRF. These features include electronic systems, which are susceptible to the HIRF environment and that were not envisaged by the existing regulations, for this type of airplane.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).